Supreme Court, U.S.
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NO. 91-165

IN THE SUPREME COURT

Of The

UNITED STATES

October Term 1991

WALLACE LIN,

Petitioner,

vs.

PRUDENTIAL-BACHE SECURITIES INC., et al.,

Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARENT/SUBSIDIARIES
OF
RESPONDENT PRUDENTIAL-BACHE SECURITIES INC.

PARENT ENTITIES

PRUDENTIAL SECURITIES GROUP, INC.
PRUDENTIAL CAPITAL AND INVESTMENT SERVICES, INC.
PRUCO, INC.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

SUBSIDIARIES

BACHE & CO. (LEBANON) S.A.L.
BACHE & CO. S.A. de C.V. (MEXICO)
BACHE HALSEY STUART COMMODITIES S.A.
BACHE HALSEY STUART SHIELDS (ANTILLES) N.V.
BACHE INSURANCE AGENCY, INCORPORATED
BACHE INSURANCE OF ARIZONA INC.
BACHE INSURANCE OF KENTUCKY, INC.
BACHE SHIELDS SECURITIES CORPORATION
BANOM CORPORATION
GELFAND, QUINN & ASSOCIATES, INC.
MOROSTO NOMINEES INCORPORATED
P-B FUTURES MANAGEMENT INC.
PRUDENTIAL MUTUAL FUND MANAGEMENT, INC.
PRUDENTIAL MUTUAL FUND DISTRIBUTORS, INC.

PRUDENTIAL MUTUAL FUND SERVICES, INC.
P-B HOLDING JAPAN INC.
PRUDENTIAL SECURITIES (JAPAN) LIMITED
PRUDENTIAL-BACHE CAPITAL FUNDING PUERTO RICO INC.
PRUDENTIAL-BACHE FUTURES ASIA PACIFIC LTD.
PRUDENTIAL-BACHE SECURITIES ASIA PACIFIC, LTD.
PRUDENTIAL-BACHE SECURITIES (BELGIUM) INC.
PRUDENTIAL-BACHE SECURITIES (ESPANA), S.A.
PRUDENTIAL-BACHE SECURITIES (FRANCE) S.A.
PRUDENTIAL-BACHE SECURITIES (GREECE) S.A.
PRUDENTIAL-BACHE SECURITIES (HOLLAND) INC.
PRUDENTIAL-BACHE SECURITIES (HOLLAND) N.V.
PRUDENTIAL-BACHE SECURITIES (HONG KONG) LIMITED
PRUDENTIAL-BACHE FUTURES (HONG KONG) LIMITED
PRUDENTIAL-BACHE SECURITIES (ITALY) INC.
PRUDENTIAL-BACHE SECURITIES (LUXEMBOURG) INC.
PRUDENTIAL-BACHE SECURITIES (MONACO) INC.
PRUDENTIAL SECURITIES (SOUTH AMERICA) INCORPORATED
PRUDENTIAL SECURITIES (URUGUAY) S.A.

PRUDENTIAL-BACHE SECURITIES (SWITZERLAND) INC.
PRUDENTIAL-BACHE SECURITIES (U.K.) INC.
SHIELDS MODEL ROLAND COMPANY
SHIELDS MODEL ROLAND NOMINEES
SHIELDS MODEL ROLAND SECURITIES INCORPORATED
BACHE INSURANCE AGENCY OF MISSISSIPPI, LTD.*
BACHE INSURANCE AGENCY OF OKLAHOMA, INC.*
BACHE INSURANCE AGENCY OF TEXAS, INC.*

*CORPORATION OWNED BY EMPLOYEES OF PRUDENTIAL SECURITIES INCORPORATED

I.

INTRODUCTORY STATEMENT

This Brief in Opposition to Petition for Writ of Certiorari is filed on behalf of PRUDENTIAL-BACHE SECURITIES INC. ("Prudential-Bache"), EUGENE STANSBERY and CARRINGTON CLARK, JR. ("Clark") (collectively referred to herein as the "Prudential Defendants"). In addition, this brief is filed on behalf of, and by special appearance for, GEORGE BALL ("Ball") and KEVIN HOFFMAN ("Hoffman"). The above-named parties were defendants in the District Court and appellees in the Court of Appeals proceeding below. This brief is filed in opposition to the Petition filed by WALLACE LIN, plaintiff in the District Court and appellant in the Court of Appeals proceeding below.

Petitioner seeks relief from this Court because his Complaint was dismissed and he was not given leave to amend.

Petitioner fails to state that he never requested leave to amend his Complaint. Nor does Petitioner state which claims he should have been allowed to amend. All of Petitioner's claims against Ball and Hoffman were dismissed for lack of personal jurisdiction. Except for two claims for relief, all of Petitioner's claims against the Prudential Defendants were dismissed for lack of subject matter jurisdiction. It is unclear how Petitioner could amend these claims so that they would not have been dismissed.

Petitioner does not raise a conflict of decisions between the different Circuit Courts of Appeals. Petitioner does not raise a federal question that was decided in a way that conflicts with a state court of last resort. Nor does Petitioner raise an important question of federal law that has not been, but should be, decided by this Court. Petitioner merely seeks relief from his own failure to request leave to amend his meritless claims. Accordingly, the Petition should be denied in its entirety.

II.

STATEMENT OF THE CASE

Petitioner asserts that it was improper for the District Court to dismiss his complaint with prejudice without allowing Petitioner the opportunity to amend his Complaint. This assertion is wholly unsupported by the facts of this case. Petitioner, a stockbroker,[1] initially brought an action in the Superior Court of California, in and for the County of Santa Clara, against the Prudential Defendants and Hoffman for wrongful discharge, breach of contract, breach of the covenant of good faith and fair dealing, fraud and misrepresentation, loss of prospective business advantage and intentional infliction of emotional distress. (Petitioner's Appx., pp. 2a and 12a.) In response to Petitioner's Complaint, the Prudential

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[1]Petitioner is currently serving a four (4) year suspension from the securities industry and was fined $10,000 as part of a disciplinary censure by the NYSE. The Securities and Exchange Commission affirmed the sanctions imposed on Petitioner by the NYSE. 45 S.E.C. Docket 544, Release No. 34-27666 (February 1, 1990). Petitioner is also licensed to practice law in the State of Connecticut.

Defendants and Hoffman moved to compel arbitration pursuant to Petitioner's employment contract and the Rules of the New York Stock Exchange ("NYSE"). The Superior Court denied the Motion to Compel Arbitration. The Court of Appeals of the State of California, Sixth Appellate District, reversed the Superior Court's decision and compelled Petitioner to arbitrate his claims. (Id.) The Supreme Court of California denied review. (Id.) After denial of review by the California Supreme Court, Petitioner did not petition for review to the United States Supreme Court. (Petitioner's Appx., p. 4a.)

Rather than initiate arbitration, Petitioner attempted to circumvent the order to arbitrate by filing a second suit almost two years later in federal district court against the Prudential Defendants and Hoffman, as well as against Ball, the Chairman and Chief Executive Officer of Prudential-Bache, and the NYSE. (Petitioner's Appx., pp. 2a and 14a.) In his federal suit, Petitioner asserted the same claims that he had made in his state action and, in addition, raised claims based on the Racketeer Influenced and Corrupt

Organizations Act, 18 U.S.C. 1961 et seq. ("RICO"), the Clayton Act, 15 U.S.C. 15, various Civil Rights statutes and the U.S. Constitution. (Petitioner's Appx., pp. 2a-3a and 14a.)

The District Court dismissed all of Petitioner's claims against all of the defendants in the federal action. (Petitioner's Appx., pp. 10a-11a.) In particular, the District Court dismissed the claims alleged against Ball and Hoffman for lack of personal jurisdiction. The claims against the NYSE were dismissed for failure to state a claim upon which relief could be granted. All of the claims against the Prudential Defendants were dismissed on the grounds that Petitioner's claims were arbitrable and that Petitioner's federal action was "an unacceptable circumvention of the arbitration ordered by the state court." (Petitioner's Appx., p. 13a.)

Instead of filing an amended Complaint, Petitioner appealed the District Court's Decision to the Ninth Circuit Court of Appeals. The Court of Appeals vacated the portion of the District

Court's Order with respect to Petitioner's claims based on the common law, state law, Civil Rights statutes and the U.S. Constitution. The Court of Appeals remanded these claims to the District Court and directed the District Court to dismiss them for lack of subject matter jurisdiction. (Petitioner's Appx., p. 9a.)

The Court of Appeals held that the District Court did have jurisdiction over Petitioner's Clayton Act and RICO claims. (Petitioner's Appx., p. 7a.) However, the Court of Appeals held that Petitioner failed to allege facts sufficient to state a claim under either RICO or the Clayton Act. (Petitioner's Appx., p. 8a.) The Court of Appeals affirmed the District Court's Decision in all other respects. (Petitioner's Appx., p. 9a.)

On remand, the District Court duly followed the Court of Appeals' direction and ordered that Petitioner's claims based on the common law, state law, the Civil Rights statutes and the U.S. Constitution were dismissed for lack of subject matter jurisdiction. (Respondents' Appx., pp. 1-2.) In addition, the District Court entered

Judgment dismissing the entire action with prejudice. (Respondents Appx., pp. 3-4.)[2]

Petitioner did not seek leave to amend his Clayton Act and RICO claims. Thus, it is the District Court's subsequent decision, rather than the Ninth Circuit's opinion, from which Petitioner now appeals to this Court.

III.

SUMMARY OF ARGUMENT

The arguments set forth below can be summarized as follows:

(A) Because Petitioner's Appeal To This Court Does Not Satisfy The Criteria Set Out In Supreme Court Rule 10, The Petition Should Be Denied In Its Entirety.

(B) Petitioner Has Never Requested Leave To Amend His Complaint.

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[2]Petitioner fails to provide the Court with the District Court's Order and Judgment on remand. Therefore, the District Court's Order and Judgment are reprinted in the Appendix hereto.

(C) The Court Of Appeals Correctly Held That There Was No Personal Jurisdiction Over Defendants Bail And Hoffman In The California Forum.

(D) The Court Of Appeals Correctly Held That The District Court Was Without Subject Matter Jurisdiction To Review The Decision Of A State Court In Judicial Proceedings.

IV.

ARGUMENT

A. Because Petitioner's Appeal To This Court Does Not Satisfy The Criteria Set Out In Supreme Court Rule 10, The Petition Should Be Denied In Its Entirety

Pursuant to Supreme Court Rule 10, the granting of certiorari is discretionary and is only granted when there are special and important reasons for granting review. The question presented by Petitioner does not meet any of the criteria set forth in Supreme Court Rule 10. First, the question presented by Petitioner does not involve a conflict in the decisional law of different circuits. Second, the Court of Appeals did not decide a federal question in a way that conflicts

with any rulings of the California Supreme Court. Third, the Court of Appeals did not depart from "the accepted and usual course of judicial proceedings." Fourth, the Court of Appeals did not decide a question of federal law which has not been settled or which conflicts with earlier decisions of this Court. Finally, it is apparent that there are no special reasons of significant public importance for granting the Petition in this case.

The question presented by Petitioner does not satisfy any of the criteria considered by this Court in deciding whether or not to exercise its discretion. Glaringly absent from Petitioner's brief is an explanation as to why his Petition raises issues that meet the Rule 10 criteria. Accordingly, the Petition should be denied in its entirety.

B. Petitioner Has Never Requested Leave To Amend His Complaint

Petitioner asserts that it was improper for the District Court to dismiss his claims with prejudice and without the opportunity to amend his Complaint.[3] The most compelling opposition to Petitioner's argument is that Petitioner has never requested leave to amend even though he has had the opportunity to do so at all times throughout these proceedings. (Fed.R.Civ.P. 15(a).) The District Court originally dismissed Petitioner's claims without prejudice. (Petitioner's Appx., pp. 10a-11a.) Petitioner did not file an amended Complaint, but instead, elected to appeal to the Court of Appeals. The Court of Appeals, inter alia, held that Petitioner failed to allege facts sufficient to state a Clayton Act or RICO claim for relief. (Petitioner's Appx., p. 8a.) The Court of Appeals did not dismiss Petitioner's Clayton Act and RICO claims with prejudice, but remanded the entire matter back to the District Court. (Petitioner's Appx., p. 9a.) On remand, the District Court dismissed Petitioner's

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[3]Inasmuch as no amount of amendment would cure the lack of subject matter and personal jurisdiction, Respondents presume that Petitioner's arguments regarding leave to amend apply to his Clayton Act and RICO claims for relief.

Clayton Act and RICO claims with prejudice. (Respondents' Appx., pp. 1-4.) Although Petitioner had the opportunity to seek leave to amend throughout the federal court proceedings, he chose not to do so.

Furthermore, Petitioner now appeals the District Court's dismissal with prejudice directly to the Supreme Court. The fact that Petitioner is appealing directly to this Court and bypassing the Court of Appeals is by itself grounds for denial of his Petition. The Supreme Court "has made clear its distaste for direct appeals from the district courts, both because of the resulting docket pressure and because of the lack of intermediate appellate consideration." 17 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure § 4039 (1988). Although there are special circumstances under which a party may appeal a District Court judgment directly to the Supreme Court (see, e.g., 28 U.S.C. § 1253), none of those special circumstances is present here. Accordingly, the Petition should be denied in its entirety.

C. The Court Of Appeals Correctly Held That There Was No Personal Jurisdiction Over Defendants Ball And Hoffman In The California Forum

The Court of Appeals correctly affirmed the District Court's dismissal of the claims against Ball and Hoffman on the grounds that the District Court lacked personal jurisdiction over them. Both the Court of Appeals and the District Court properly found Ball and Hoffman did not have sufficient minimum contacts with California to establish either general or limited personal jurisdiction. (Petitioner's Appx., pp. 5a-7a and 11a-12a.)

Ball had absolutely no contacts with the California forum. (Petitioner's Appx., p. 7a.) Hoffman's contacts with the California forum consisted of several telephone calls from New York to California which were all made in the performance of his official duties. These contacts are not sufficient to support the exercise of personal jurisdiction. Forsythe v. Overmyer, 576 F.2d 779, 783-84 (9th Cir.), cert. denied, 439 U.S. 864 (1978); Peterson v. Kennedy,

771 F.2d 1244, 1262-63 (9th Cir. 1985); cert. denied, 475 U.S. 1122 (1986).

Petitioner does not even address Forsythe or Peterson. Instead, Petitioner merely rehashes his version of the facts that has been implicitly rejected by both the Court of Appeals and the District Court. In addition, Petitioner erroneously asserts that personal jurisdiction is proper under the Court's holding in Calder v. Jones, 465 U.S. 783 (1984).

Petitioner's reliance upon Calder is misplaced. In Calder, the Court held that two employees of the National Enquirer had sufficient contacts with the State of California such that the exercise of personal jurisdiction over them would not be improper. The two employees had participated in the writing of a libelous story about a resident of California. Although the story was mainly written in Florida, the reporter defendant made several trips to the forum and made numerous calls to California to gather background information.

Moreover, the national nature of the publication, and the fact that California was the state in which the National Enquirer had its largest circulation, weighed heavily in the Court's decision to exercise jurisdiction over the two employees. Id. at 785, 790.

In the instant case, Ball had no contacts with the California forum. Hoffman's only contacts were several phone calls made from New York to the Petitioner in California, the purpose of which was to investigate the customer complaints against Petitioner. Thus, the quantity and quality of contacts present in Calder are not present in this case. (Petitioner's Appx., pp. 6a-7a and 12a.) Accordingly, the Petition should be denied in its entirety.

D. The Court of Appeals Correctly Held That The District Court Was Without Subject Matter Jurisdiction To Review The Decision Of A State Court In Judicial Proceedings

This Court has made it clear that the district courts, as courts of original jurisdiction, have no authority to review the final

determinations of state courts in judicial proceedings. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers, 398 U.S. 281, 296 (1970); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). In complete accordance with these precedents, the Court of Appeals held that there was no subject matter jurisdiction over Petitioner's pendent claims arising out of the common law and state law, the various Civil Rights statutes, and the First, Fifth and Eighth Amendments to the U.S. Constitution "because these claims clearly are based on exactly the same conduct and allegations that formed the basis for his state court action." (Petitioner's Appx., p. 4a.)

The aforementioned doctrine applies even when the challenge to the state court decision involves federal constitutional issues. Worldwide Church of God v. McNair, 805 F.2d 888, 890-91 (9th Cir. 1986). The test is whether the claims brought in the federal court are "inextricably intertwined" with the state court's decision,

such that a decision by the federal court would require reviewing the propriety of the state court decision. Feldman, 460 U.S. at 483-84. It does not matter that a plaintiff did not raise the federal claims in the state court, as long as he could have done so. Id.

Petitioner asserts that his claims for relief in the federal action were separate and distinct from those in the state court action and, therefore, the Court of Appeals erred in finding that the District Court was without subject matter jurisdiction to consider these claims. (Petitioner's Brief, p. 10.) Petitioner's argument is without merit. The Court of Appeals correctly found that Petitioner's pendent claims arising out of the common law and state law, the Civil Rights Statutes, and the First, Fifth and Eighth Amendments to the U.S. Constitution were based on exactly the same conduct and allegations that formed the basis for Petitioner's state court action. (Petitioner's Appx., p. 4a.) Thus, any consideration of these claims by the District Court would have required reviewing the propriety of the California Court of

Appeals' Decision which the District Court was without jurisdiction to do. See Feldman, 460 U.S. at 483-84.

Petitioner does not even address why subject matter jurisdiction should exist over his claims. Petitioner merely cites Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976) for the general proposition that the federal courts have "a virtually unflagging obligation to exercise jurisdiction given them." (Petitioner's Brief, p. 10.)

Petitioner's reliance on Colorado River is misplaced. First, Colorado River involved concurrent proceedings in both a state and federal court. Id. at 806, 817. Colorado River did not involve a subsequent proceeding in federal court to essentially review a previous state court determination. Second, the Supreme Court has held that once a state court decides the issue of arbitrability, the federal court is bound to honor that determination as res judicata. Moses H. Cone

Memorial Hosp. v. Mercury Construction Corp., 460 U.S. 1, 10 (1983).

V.

CONCLUSION

For all of the reasons stated herein, the Petition should be denied in its entirety.

Respectfully submitted,

KEESAL, YOUNG & LOGAN
A Professional Corporation

By: /s/
Peter R. Boutin
Brian L. Zagon
Attorneys for Respondents
Prudential-Bache Securities Inc., Eugene Stansbery, Carrington Clark, Jr., and Specially Appearing For Kevin Hoffman and George Ball

APPENDIX

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. CV-89-20110-WAI

WALLACE E. LIN

Plaintiff,

v.

PRUDENTIAL-BACHE SECURITIES, INC., GEORGE BALL, KEVIN HOFFMAN, EUGENE STANSBERY, CARRINGTON CLARK, JR. and NEW YORK STOCK EXCHANGE, INC.

Defendants.

ORDER

The above-captioned action was dismissed by order of the court dated September 19, 1990. Plaintiff appealed to the United States

Court of Appeals for the Ninth Circuit. The memorandum decision by the Ninth Circuit, filed on March 20, 1991, vacated "[t]hat part of the order dismissing claims based on the common law, state law, the Civil Rights statutes and the U.S. Constitution" and remanded the case back to this court "with directions to enter an order dismissing those claims for lack of subject matter jurisdiction."

Accordingly, IT IS HEREBY ORDERED that plaintiff's claims based on the common law, state law, the Civil Rights statutes and the U.S. Constitution are DISMISSED for lack of subject matter jurisdiction.

Dated: 4 30 91

WILLIAM A. INGRAM
United States District Judge

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. CV-89-20110-WAI

WALLACE E. LIN

Plaintiff,

v.

PRUDENTIAL-BACHE SECURITIES, INC., GEORGE BALL, KEVIN HOFFMAN, EUGENE STANSBERY, CARRINGTON CLARK, JR. and NEW YORK STOCK EXCHANGE, INC.

Defendants.

JUDGMENT

Pursuant to the Order of this court dated April 29, 1991 and the memorandum decision from the United States Court of Appeals for the Ninth Circuit dated March 20, 1991, IT IS HEREBY ORDERED,

ADJUDGED AND DECREED that the above captioned action is DISMISSED WITH PREJUDICE.

Dated: 4 30 91

WILLIAM A. INGRAM

United States District Judge